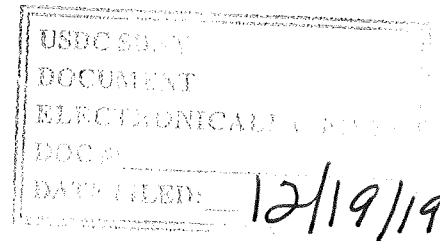


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TIMOTHY JAMES ULTSCH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.
-----X



ORDER

19 CV 10703 (VB)

On July 16, 2012, petitioner pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He was sentenced in the Eastern District of Virginia to a term of 180 months imprisonment.

On July 22, 2019, following the Supreme Court's decision in Rehaif v. United States, 139 S. Ct. 2191 (2019), petitioner moved in the Eastern District of Virginia for a writ of audita querela pursuant to the All Writs Act, 28 U.S.C. § 1651(a).

After the United States Attorney's Office for the Eastern District of Virginia responded to petitioner's motion, and petitioner replied, the court in the Eastern District of Virginia found petitioner's claim for relief properly falls under 28 U.S.C. § 2241. (Doc. #1). Because a motion pursuant to Section 2241 must be filed in the district in which the petitioner is incarcerated, and because petitioner was incarcerated at FCI Otisville, in Otisville, New York, the court found it lacked jurisdiction to consider petitioner's motion. As a result, the court in the Eastern District of Virginia transferred the motion to the Southern District of New York in the interest of justice.

On November 22, 2019, petitioner filed a request to proceed in forma pauperis. (Doc. #6).

Accordingly, it is HEREBY ORDERED:

1. The Court reserves decision on petitioner's request to proceed IFP.
2. By January 21, 2020, the United States Attorney's Office for the Southern District of New York shall file a letter addressing whether petitioner's motion is properly construed as a second or successive petition under 28 U.S.C. § 2255, in which case this Court must transfer the motion to the U.S. Court of Appeals for the Fourth Circuit under 28 U.S.C. § 2244(b)(3)(A), or as a petition under Section 2241, in which case this Court may retain jurisdiction.
3. Petitioner may, but is not required to, file a response to the government's submission. Petitioner's deadline to do so is February 20, 2020.

The Clerk is instructed to (i) electronically notify the Criminal Division of the United States Attorney's Office for the Southern District of New York that this Order has been issued, and (ii) mail a copy of this Order to petitioner at the address on the docket.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: December 19, 2019
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge